

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

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| Planned Parenthood Southwest Ohio Region et al., | : | Case No. 1:19-cv-118 |
| Plaintiffs | : | Judge: Michael Barrett |
| vs. | : | <u>NOTICE TO COURT REGARDING</u> |
| | : | <u>DEFENSE PROVIDED BY THE</u> |
| | : | <u>COUNTY PROSECUTORS'</u> |
| | : | <u>OFFICES</u> |
| David Yost, Attorney General of Ohio et. al., | : | |
| Defendants | : | |

Now come the Ohio Prosecuting Attorneys for Cuyahoga County, Franklin County, Hamilton County and Montgomery County, through counsel, and give Notice to the Court regarding the position of these County Defendants in this matter.

1. Procedural Posture

On February 14, 2019, Plaintiffs brought this action against David Yost, Ohio's Attorney General and the prosecutors of Cuyahoga, Franklin, Hamilton and Montgomery Counties in Ohio in their official capacities. On February 15, 2018, the Court held a scheduling conference by telephone where Plaintiffs and Defendants were represented by counsel, other than Defendant Cuyahoga County. Plaintiffs seek a declaration as to the constitutionality of newly enacted R.C. §2919.15 which bans the dilation and evacuation procedure as a method of abortion after 15 weeks of pregnancy. Plaintiffs also seek injunctive relief restraining Defendants and their successors in office from enforcing §2919.15. It is noted that although Ohio has 88 counties and therefore 88 elected county

prosecutors, Plaintiffs have only named four county prosecutors as defendants in this action.

2. The Responsibilities of Ohio Attorneys General and Ohio County Prosecutors under Ohio Law.

Pursuant to R.C. § 309.08 the prosecuting attorney of each Ohio county shall prosecute, on behalf of the state, all complaints, suits, and controversies in which the state is a party. If a law is constitutional, the prosecuting attorney will enforce it on behalf of the state. Conversely, if a law is deemed unconstitutional, the prosecuting attorney will not prosecute violations of the unconstitutional law. It is neither the role nor the duty of the prosecuting attorney to defend the challenged constitutionality of laws proposed by the General Assembly.

Pursuant to R.C. § 109.92 the Ohio attorney general shall appear for the state in the trial and argument of all civil and criminal causes in the supreme court in which the state is directly or indirectly interested. Under the current posture of this legal challenge, it is the responsibility of the Attorney General, not the Prosecutor, to defend the challenged constitutionality of laws proposed by the General Assembly. In the action before the Court, the Ohio Prosecutors' Offices will rely on the office of the Attorney General to defend the constitutionality of the legislation at issue in this case.

3. Plaintiffs' waiver of claim for attorneys' fees against the Ohio Prosecutors' Offices.

Plaintiffs acknowledge that the defense of the Ohio statute is solely within the duty of the Ohio Attorney General. As such, Plaintiffs advise the Court that should Plaintiffs prevail in their challenge to the Ohio statute, Plaintiffs will not bring a claim for attorneys' fees against the Ohio Prosecutors' Offices specifically named in this litigation.

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CERTIFICATE OF SERVICE

I hereby certify that on February 28th, 2019 I electronically filed the foregoing Notice with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record.

/s/ Pamela J. Sears
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